

Resolution No.: 15-1268
Introduced: December 13, 2005
Adopted: December 13, 2005

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
WITHIN MONTGOMERY COUNTY, MARYLAND**

By: District Council

SUBJECT: Denial of Zoning Application G-834 for the reclassification from the R-200/TDR Zone to the RT-8 Zone of 5.288 acres of land known as P-426 and located at 12024 Darnestown Road, Gaithersburg, Maryland in the 6th Election District.

Tax Account No. 00388410

OPINION

Zoning Application No. G-834, filed on January 6, 2004, requests reclassification from the R-200/TDR Zone to the RT-8 Zone of 5.288 acres of land known as P-426 and located at 12024 Darnestown Road, Gaithersburg, Maryland, in the 6th Election District.

The Hearing Examiner recommends denial of the application on the basis that the application does not satisfy the requirements of the purpose clause of RT-8 Zone, that the application does not propose a compatible form of development, that the application does not conform with the recently adopted and approved Potomac Sub-region Master Plan, and that the application is not in the public interest. The Technical Staff and Planning Board, by a 3 to 2 vote, recommend approval. The District Council agrees with the recommendation of the hearing examiner and adopts the findings of fact and conclusions set out in the hearing examiner's report and recommendation.

The subject property is located on the south side of Maryland Route 28, also known as Darnestown Road, about 1,000 feet east of its intersection with Quince Orchard Road. The property is located at the northern tip of the emerging community of North Potomac. It lies directly south of the City of Gaithersburg. The property is rectangular in shape and measures 5.288 acres. It possesses 325 feet of frontage along Darnestown Road and extends about 700 feet in depth.

The property is currently used as a horticultural nursery operating as the Potomac Garden Center. The topography of the site rises to the south, or the rear of the property, and is about 10 to 15 feet higher than the front of the property. Access to the site is by way of a single driveway from Darnestown Road on the west side of the site. The site contains a large retail building, the access driveway and associated parking areas, about 20 greenhouses, and storage of landscape contractor materials and equipment. The nursery is screened from adjacent residential homes by berms, a fence of 8 or 9 feet in height and evergreen trees planted on top of the berms.

There is a drainage swale in the northeast corner of the site that catches runoff from a culvert under the newly improved Route 28 and drainage extends through the site in a southeast direction to the Muddy Branch stream. The drainage swale is classified as a protected stream valley buffer. The buffer area constitutes about 1.5 acres or about 30% of the site.

The 1954 Regional District Zoning applied the Rural-Residential (R-R) Zone to this area of the County and classified the property for half-acre residential density. The Board of Appeals approved the use of the site as a horticultural nursery in 1971 and several modifications were subsequently approved to allow for offices and retail sales. In 1973 the old R-R Zone was replaced by the R-200 Zone but left residential land uses and density essentially the same as under the previous zoning. In 1982, the R-200/TDR Zone was applied to the site and adjacent properties by comprehensive zoning. The property is subject to the recommendations of the Potomac Sub-region

Master Plan, approved and adopted in 2002. The master plan recommends the R-200/TDR Zone for the property.

The District Council determines that the surrounding area used for purposes of evaluating this application is bounded by Quince Orchard Road on the west, Hillstone Road and a line extending to Tschiffely Square Road on the north, Tschiffely Square Road on the east, and the Orchard Knolls subdivision to the south and east. The Technical Staff and the Hearing Examiner recommend the use of this area. The Applicant's more extended area is rejected for purposes of evaluating this application.

The land use and zoning pattern of the area reflects predominately single-family detached residential homes supplemented with a mixture of two townhouse areas, institutional uses and shopping areas. Maryland Route 28 has been recently upgraded to a major highway consisting of 4 lanes within a 150-foot right of way divided by a median strip. The improved road contains left turn storage lanes and acceleration/deceleration lanes along both sides of the road.

About one-third of the surrounding area is located on the north side of Route 28 and in the City of Gaithersburg. The Orchards townhouse community is located directly opposite the subject property and was developed in the late 1960s under Gaithersburg's RP-T Zone. The record is silent as to the actual density of this project and the number of townhouses within the surrounding area located north of Route 28. To the east of the Orchards is the Kentlands Elementary School, also known as the Rachel Carson Elementary School. To the west of the Orchards is the recently expanded and renamed shopping center known as "The Shoppe's of Potomac Valley".

About two-thirds of the surrounding area is located on the south side of Route 28. This area includes the subject property, which is bordered on two sides by the 150 home Orchard Knolls residential community. Access to this community is by way of Blackberry Drive. The east side of

Blackberry Drive contains a cluster of 67 townhouses that was built as an early part of the Orchard Knolls subdivision. These townhouses are developed on about the same elevation as the single family detached homes. The townhouses are separated from the nearby single-family detached homes by a road and 60 foot of right-of-way. A distance of about 135 feet also separates the townhouses from the closest single family detached home. The townhouses are integrated into the community as part of the prevailing R-200/TDR zoning scheme. The remaining 83 units are single-family detached homes located on lots of about one-third of an acre on the average. The entire subdivision was planned and built under the R-200/TDR Zone and reflects a density of 3 dwelling units per acre.

Immediately west of the subject property is a 4.7 acre parcel also classified under the R-200/TDR Zone and used as Fire Station No. 31. Bordering on the west side of the fire station is a mix of retail shops, offices and fast food restaurants also part of the Shoppe's of Potomac Valley. Quince Orchard Road forms part of the western boundary of the surrounding area.

The Applicant proposes to develop the site with townhouses under the optional method of application that allows binding limitations under a schematic development plan. The Applicant has not restricted density and can develop the site with 42 units although an illustrative plan shows 39 units. The project is large enough to fall under the requirements to provide moderately priced dwelling units (MPDUs) although the Applicant has not proposed any specific number of MPDUs and will comply with any preliminary plan of subdivision stage determination about the number of MPDUs that might be required. The evidence suggests that MPDUs could provide a total density of up to 51 units depending on the application of the density bonus provision.

The proposal is subject to six binding elements. Access will be limited from Route 28 with right turn-in and right turn-out only. The required distance between the closest lot line of the

proposed townhouses and the southern and eastern property lines will be a minimum of 60 feet. The Applicant will also maintain the existing grade, berm and landscaping on the site. In addition, landscaping will be supplemented by another row of evergreen trees similar in type as the existing trees. A landscaped easement will be placed on a non-disturbance area requiring a future homeowners association to perpetually preserve, maintain, and replace existing landscaping as necessary. A pedestrian connection will be provided to Citrus Grove Road to the south of the proposed development.

The Applicant will also provide a stream valley buffer area of about 1.5 acres. A storm drainage plan proposes to reduce the impervious area that is about 60% of the land to about 40%. The drainage plan also proposes to reduce the drainage area and the volume and velocity of runoff.

The District Council finds that the Application does not satisfy the requirements of the purpose clause for the RT-8 Zone, § 59-C-1.721 of the Zoning Ordinance. The evidence does not support the Applicant's contention that there is a need or a transition between commercial, industrial or high-density apartment uses and single-family uses. There are no commercial, industrial or high-density apartment uses abutting the site that would make it a suitable candidate for such a transition. The adjacent fire station is an institutional use and is located on a well-maintained and landscaped site. The Master Plan or any other official planning document does not designate the subject property for development under the RT-8 Zone. Finally, the subject property is not appropriate for development at densities permitted under the RT-8 Zone because the property is bordered on two sides by single family detached homes, there are no townhouses contiguous to the subject property, the location of townhouses on the subject property would isolate a row of single-family detached homes, the RT-8 Zone is inconsistent with the prevailing R-200/TDR Zoning located south of Route 28, and likely density would range from 2.6 to 4.2 times the comparative densities of planned and

adjacent uses. The threefold increase in density would create an island of higher density amidst a sea of low-density development.

The District Council concludes that the proposed development would be incompatible with the surrounding area notwithstanding the Applicant's proposals for setbacks and landscaping. There are current gaps in the tree stand that allow the townhouses to be visible from adjacent homes. The Applicant's proposal for a second row of trees does not establish that the gaps will be closed. There is also an elevation rise to the subject property that ranges from 10 to 15 feet and the Applicant's own evidence shows that the peak of the proposed townhouses will be between 24.9 and 27.1 feet higher than the peaks of some existing homes. The Master Plan emphasizes that comparative density is an important factor in determining compatibility with adjacent development and the threefold density increase that would result from the proposed development is too great to be mitigated by setbacks and landscaping.

The District Council determines that the proposed zoning is inconsistent with the recommendations of the applicable Master Plan. The Potomac Sub-region Master Plan, adopted and approved in 2002, explicitly recommends that the entire area where the subject property is located remain classified under the R-200TDR Zone. The fact that this is a recent recommendation adds to the weight to be accorded to the recommendation.

The District Council also determines that the proposed rezoning is not in the public interest. The proposal does not conform to the explicit recommendation of the master plan. The Applicant's proposed environmental improvements to the site are also available if the site is developed under the current zoning. The fact that the rezoning is contrary to the comprehensive plan and lacks any special public interest features places it in a category more akin to spot zoning, that is, zoning that would benefit only the Applicant.

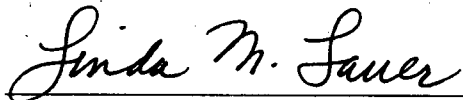
For these reasons and because to deny the application would aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the application will be denied in the manner set forth below.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, approves the following resolution.

Zoning Application No. G-834, which requests reclassification from the R-200/TDR Zone to the RT-8 Zone of 5.288 acres of land known as P-426, located at 12024 Darnestown Road, Gaithersburg, Maryland, in the 6th Election District, is denied.

This is a correct copy of Council action.

A handwritten signature in cursive script that reads "Linda M. Lauer".

Linda M. Lauer, Clerk of the Council